

AO 241 (Rev. 09/17)

FILED  
IN CLERKS OFFICEPETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

2019 DEC 24 AM 10:58

United States District Court		District: 1 <sup>ST</sup>	U.S. DISTRICT COURT DISTRICT OF MASS.
Name (under which you were convicted): JOHN E. DUTCHER		Docket or Case No.:	
Place of Confinement: M.C.I. Norfolk		Prisoner-No.: W46237	
Petitioner (include the name under which you were convicted): JOHN E. DUTCHER		Respondent (authorized person having custody of petitioner): v. CAROL A. Mici	
The Attorney General of the State of:			

## PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

BROCKTON SUPERIOR  
32 BELMONT ST.  
BROCKTON, MA. 02401

- (b) Criminal docket or case number (if you know): 84018, 84019, 84020

2. (a) Date of the judgment of conviction (if you know): JANUARY 1989

- (b) Date of sentencing: MARCH 1989

3. Length of sentence: 20-40 yrs

4. In this case, were you convicted on more than one count or of more than one crime?
- ☒
- Yes
- ☐
- No

5. Identify all crimes of which you were convicted and sentenced in this case:

AGGRAVATED RAPE M.G.A.C 265 § 22A 20-40 yrs  
ARMED BURGLARY M.G.A.C 266 § 14 20-40 yrs  
ASSAULT & BATTERY ? guilty filed

\* ALL SENTENCES TO RUN CONCURRENT WITH THE  
PETITIONERS DAY TO LIFE CIVIL COMMITMENT

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)  
☐ (2) Guilty ☐ (4) Insanity plea

\* PETITIONER pled guilty TO INDICTMENTS 84057, 84058 TO BE  
COMMITTED TO THE DEPT OF MENTAL HEALTH.

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury    ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes    ☐ No    TRIAL

8. Did you appeal from the judgment of conviction?

☒ Yes    ☐ No

9. If you did appeal, answer the following:

(a) Name of court: MASS. APPEALS COURT

(b) Docket or case number (if you know): 91-P-897

(c) Result: JUDGMENTS AFFIRMED

(d) Date of result (if you know): MARCH 6, 1992

(e) Citation to the case (if you know): \_\_\_\_\_

(f) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL AS A  
RESULT OF TRIAL COUNSEL'S CROSS-EXAMINATION OF A  
COMMONWEALTH WITNESS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(g) Did you seek further review by a higher state court?    ☒ Yes    ☐ No

If yes, answer the following:

(1) Name of court: SUPREME JUDICIAL COURT OF MASSACHUSETTS

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Result: PETITION FOR FURTHER APPELLATE REVIEW  
DENIED

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(4) Date of result (if you know): April 28, 1992

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_  
\_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Brockton Superior Court(2) Docket or case number (if you know): 84018(3) Date of filing (if you know): 2000? 2004

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: MOTION TO BE RELEASED FROM UNLAWFUL  
RESTRAINT, MOTION TO W/DRAW GUILTY PLEAS  
84057, 84058\* PETITIONER HAS FILED NUMEROUS CASES AS ALLOWED  
BY MASS. LAW AND RULES OF CIVIL PROCEDURE  
TOO NUMEROUS TO COUNT - ALL OF WHICH HE HAS  
CLAIMED HIS ACTUAL INNOCENCE. A COMPLETE DOCKET  
ENTRY SHEET IS ENCLOSED.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☒ Yes ☐ No(7) Result: MOTION TO BE RELEASED FROM UNLAWFUL REST. DENIED  
MOTION TO W/DRAW GUILTY PLEAS CONSTRUED AS MOTION  
SEEKING JAIL CREDIT - AWARDED 295 DAYS.

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(8) Date of result (if you know): 2005, MARCH

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: BROCKTON SUPERIOR(2) Docket or case number (if you know): 84018(3) Date of filing (if you know): 2009(4) Nature of the proceeding: RULE 30B MOTION FOR NEW TRIAL(5) Grounds raised: INEFF. ASST. OF COUNSEL - BOTH TRIAL & APPELLATE COUNSEL. FAILURE TO TURN OVER EXCULPATORY EVIDENCE. JUDICIAL ERROR, MOTION FOR DNA TESTING

\* A COMPLETE COPY OF THE PETITIONERS ISSUES ARE INCLUDED SEPERATELY FOR THE SAKE OF CLARITY -

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No(7) Result: DENIED NO REASON GIVEN(8) Date of result (if you know): 2009 RECONSIDERATION DENIED 2010

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: BROCKTON SUPERIOR(2) Docket or case number (if you know): 84018(3) Date of filing (if you know): ~~2009~~ - ~~2010~~ 2013(4) Nature of the proceeding: MOTION FOR DNA TESTING / NEW TRIAL(5) Grounds raised: IN LIGHT OF S.J.C. RULING IN OSADEN V. ALASKA, MA. ENACTS NEW SCIENTIFIC TESTING LAW M.G.L.C. 278A. PETITIONERS MOTION FOR NEW TRIAL DENIED, MOTION FOR D.N.A. TESTING IF ANY AVAILABLE GRANTED, COUNSEL APPOINTED TO REPRESENT.



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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No\* (7) Result: NO D.N.A. EVIDENCE AVAILABLE(8) Date of result (if you know): MOTIONS DENIED

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No <sup>2</sup>(2) Second petition: ☐ Yes ☐ No <sup>2</sup>(3) Third petition: ☐ Yes ☐ No <sup>2</sup>

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

UNDER MASS. LAW PETITIONER STILL HAD LEGAL MEANS TO BRING ISSUES BEFORE THE LOWER COURT AS TO EXHAUST REMEDIES.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:** THE JUDGE AMENDED THE INDICTMENT FROM ARMED BURGLARY M.G.L.C. 266§14 TO UNARMED BURGLARY M.G.L.C. 266§15

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

WHILE CITING HIS CHARGE TO THE JURY ON THE ELEMENTS OF ARMED BURGLARY §14 - THE JUDGE, AFTER TELLING THE JURY THAT IF A PERSON IS ARMED OR ARMS HIMSELF WHILE IN THE RESIDENCE - SAYS TO THE JURY STRIKE THAT - IT'S SECTION 15 - FORGET ANYTHING ABOUT BEING ARMED OR UNARMED - THEN HE PROCEEDS TO CHARGE THE JURY ON THE ELEMENTS.

(b) If you did not exhaust your state remedies on Ground One, explain why: THIS ISSUE SHOULD

HAVE BEEN RAISED BY DIRECT APPELLATE COUNSEL - I HAVE NOW EXHAUSTED ALL STATE REMEDIES AS THE S.J.C. HAS REFUSED FURTHER APP. REVIEW - I NOW ASERT AND FILE THIS HABEUS CHALLENGING ALL GROUNDS THAT I RAISED IN THE COMPLAINT FOR NEW TRIAL - CITING THE MISARRIAGE OF JUSTICE STANDARD AND ACTUAL INNOCENCE.

\* THE D.A. WAS NOTIFIED BY THE COURT TO PICK UP DNA EVIDENCE (VICTIM'S CLOTHING) REFUSAL TO RESULT IN DESTRUCTION OF EVIDENCE IN ACCORDANCE W/THE LAW AT THE TIME - EVIDENCE WAS

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## (c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: Quite simply THE PETITIONERS App. Counsel failed to represent him at a critical stage of the trial process.

## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: RULE 30 B MOTION FOR NEW TRIAL & RULE 61 A PETITIONName and location of the court where the motion or petition was filed: BROCKTON SUPERIORDocket or case number (if you know): 84018Date of the court's decision: FEB, 2017

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☒ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☒ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: MASS. APPEALS COURT  
ONE ASHBURTON Sq. BOSTON, MA. 02108Docket or case number (if you know): 2018-P-0308

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

PETITIONED THE MASS. SUPREME JUDICIAL COURT FOR FURTHER APP. REVIEW (COPY ENCLOSED.)

**GROUND TWO:**

INEFFECTIVE ASSISTANCE of Appellate Counsel  
(THE PETITIONER RAISED NUMEROUS ISSUES UNDER INJ. ASST. of Counsel  
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): BOTH TRIAL & Appellate)

APPELLATE COUNSEL HAD ONE JOB, TO REVIEW THE TRANSCRIPTS AND PRESENT ANY CONSTITUTIONAL VIOLATIONS OR MISTEPPS IN THE TRIAL PROCESS. COUNSEL PRESENTED ONE ISSUE, OVER LOOKING OTHER MORE SIGNIFICANT CONSTITUTIONAL ERRORS (SUPRA). A BRADY VIOLATION, THERE IS EVIDENCE THAT NO SEXUAL ASSAULT OCCURED - THE RECORD IS RE-PEAT WITH ISSUES THAT APP. COUNSEL FAILED TO RAISE - AND NOW THE STATE CLAIMS SUCH ISSUES ARE WAIVED.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

**(c) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?



Yes



No

(2) If you did not raise this issue in your direct appeal, explain why:

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?



Yes



No

(2) If your answer to Question-(d)(1) is "Yes," state:

Type of motion or petition:

RULE 30 B MOTION FOR NEW TRIAL & RULE 61A MOTION

Name and location of the court where the motion or petition was filed:

BRACKTON SUPERIOR

Docket or case number (if you know):

84018

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Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

Copy Enclosed

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Mass. App. Ct.

Docket or case number (if you know):

2018-P-0308

Date of the court's decision:

August 30, 2019

Result (attach a copy of the court's opinion or order, if available):

Copy Attached

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:PETITION TO S.J.C. of MASS.  
FOR FURTHER App. REVIEW. (COPY ENCLOSED)**GROUND THREE:**TRIAL COUNSEL: THE COURT CONCEDED THE CRIMES  
TO THE JURY THEREBY RELIEVING THE COMM. OF THEIR BURDEN TO PROVE A \*  
(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):DURING THE TRIAL, TRIAL COUNSEL AND THE JUDGE TOLD  
THE JURY THAT THE CRIMES WERE CONCEDED CONTRARY TO THE  
EVIDENCE. THE LAB REPORT THAT WAS WITH HELD FROM THE DEFENSE  
INDICATED THAT NO SEXUAL ASSAULT HAD OCCURED. THE PETITIONER  
WAS ENTITLED UNDER THE LAW TO BE PRESENT AT THE PRE-TRIAL\* CRIME HAD BEEN COMMITTED, WITHOUT THE PETITIONERS CONSENT  
AS IS REQUIRED BY THE CONST. & LAWS.



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(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

R. 30 B MOTION - R. 61 A MOTION SUPRA

Name and location of the court where the motion or petition was filed:

SUPRA

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

SUPRA

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

**GROUND FOUR:** IS THE COURTS ARGUMENT THAT THE PETITIONERS

CLAIMS ARE WAIVED AND NOT FRIVOLOUS, THAT THEY SHOULD HAVE BEEN

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

RAISED ON DIRECT APP. REVIEW, AN INDICTMENT THAT APP. COUNSEL WAS  
INEFFECTIVE.

THE COURT ACKNOWLEDGES THE PETITIONER HAS REAL  
LEGAL ISSUES BUT THOSE ISSUES ARE WAIVED BECAUSE THEY SHOULD  
HAVE BEEN RAISED ON DIRECT APP. REVIEW, THEY SHOULD HAVE  
AND THEREFORE THAT IS WHY APP. COUNSEL WAS INEFFECTIVE, HE  
VIOLATES CLEARLY EST. FED. CONSTITUTIONAL LAW BY PROVIDING MEANINGFUL

(b) If you did not exhaust your state remedies on Ground Four, explain why:

COUNSEL AT A CRITICAL  
STAGE OF THE TRIAL PROCESS. FEDERAL COURTS HAVE HELD THAT IF APP.  
COUNSEL PRESENTS ISSUES FOR APPEAL WHILE IGNORING ISSUES OF  
GREATER SIGNIFICANCE THIS ACTION CONSTITUTES INCOMPETENCE.  
THAT IS CLEARLY THE CASE HERE - THE FACTS BEAR THAT OUT.

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

MY ATTORNEY WAS  
INCOMPETENT

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

SUPRA

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Name and location of the court where the motion or petition was filed:

Brockton Superior

Docket or case number (if you know):

84018

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

DONE

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

SUPRA

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

MOTION SEEKING FURTHER  
APP. REVIEW TO THE S.J.C.

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

*NO - I HAVE TRIED EVERY LEGAL MEANS AVAILABLE IN THIS STATE TO CORRECT THIS INJUSTICE - I'M NO ANGEL BUT I DID NOT COMMIT THIS OFFENSE EITHER.*

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No \*

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

*I FILED A FED. HARB. IN REGARDS TO THE MOTION TO BE RELEASED FROM UNLAWFUL RESTRAINT AND A MOTION TO WITHDRAW GUILTY PLEAS UNDER M.G.L. c 30A. THIS CASE HAD TO DO WITH THE SENTENCE NOT THE CONVICTION OF WHICH I AM CHALLENGING.*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

*YES - MOTION TO CORRECT MITTIMUS - SEEKING 419 DAYS JAIL CREDIT.*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

JOHN DARREL, PUBLIC DEFENDERS OFFICE  
BROCKTON, MASS 02401

(b) At arraignment and plea:

JACK YUNITS, BROCKTON, MASS.

(c) At trial:

JOHN YUNITS

(d) At sentencing:

JOHN YUNITS

(e) On appeal:

RICHARD SHEA, P.O. Box 261, Boston, MA. 02133

(f) In any post-conviction proceeding:

DAVID NELSON, JOHN SWOMLEY, IRA  
GRANT, SELF.

(g) On appeal from any ruling against you in a post-conviction proceeding:

SELF.

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☒ Yes ☐ No MAYBE TO THE SUPREME JUDICIAL COURT

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

IT IS MY CONTENTION THAT THE LAW READS ONE YEAR FROM  
THE CONVICTION BECOMING FINAL - FINALITY BEING THAT THERE  
IS NO AVAILABLE REMEDY OR CHANCE THAT THE STATE WILL  
THROW OUT THAT CONVICTION, OR MODIFY SAID CONVICTION  
THUS ON THAT DATE ALBEIT 1 MONTH OR 50 YEARS, IF THE

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STATE AFFORDS AN INDIVIDUAL A REMEDY OR RECOURSE THEN UNTIL THE STATES HIGHEST COURT DECIDES TO ACT EITHER FOR OR AGAINST, THE CASE IS NOT TOLLED.

SECOND - AND MOST IMPORTANTLY IS THAT IF A STATE COURTS DECISION VIOLATES CLEARLY ESTABLISHED FEDERAL LAW OR THE CONSTITUTION 28 USC. § 2244(d) DOES NOT BAR MY PETITION

I DO BELIEVE THAT IN ORDER TO PREVAIL ON MY PETITION I MUST MEET THAT BURDEN; AND I CAN, FED. CONST. LAW DOES NOT ALLOW AN INDIVIDUAL TO BE OR STAND CONVICTED OF A CRIME IN WHICH HE WAS NOT INDICTED FOR. THE JUDGE, KNOWINGLY OR UNKNOWNLY AMENDED THE INDICTMENT FROM ARMED BURGLARY TO UNARMED BURGLARY - A SIGNIFICANT DIFFERENCE - AS ONE SENTENCE IS ANY # OF YEARS TO LIFE WHILE THE AMENDED CHARGE CARRIES 20 YEARS MAX.

THE ISSUES PRESENTED BY THE PETITIONER ARE STEEPED IN FED. CONST. LAW - COUNSEL WAS INEFFECTIVE, AND THE DEF. WAS CONVICTED OF A CRIME THE JUDGE THREW OUT. THIS INJUSTICE CANNOT STAND -

ADDITIONAL PAPER ENCLOSED.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

THERE IS A SAFE GUARD IN OUR SYSTEM OF JUSTICE THAT SUPERCEDES EVEN THE TIME TELLING STATUTES OF THE ANTITERRORISM - EFF. DEATH PENALTY ACT OF 1996. THAT SAFE GUARD IS THE CONSTITUTIONS FUNDAMENTAL RIGHTS FOR A FAIR TRIAL AND TO BE REPRESENTED BY COMPETANT COUNSEL.

WHEN THOSE RIGHTS BREAK DOWN, AS IS THE CASE HERE, AN INDIVIDUAL IS SUBJECT TO A MIS-CARRIAGE OF JUSTICE. THE DEF. WAS CONVICTED ON EYE WITNESS EYEDENTIFICATION ONLY. EVIDENCE THAT THIS VERY JUDICIAL SYSTEM SAYS IS THE WORST FORM OF EVIDENCE ALLOWABLE.

THE PETITIONER, AFTER THE FACT, CAME INTO EVIDENCE THAT THE COMPLAINT WAS IN FACT NOT SEXUALLY ASSAULTED; HOWEVER, BECAUSE THE CRIMES WERE CONCEDED BY THE COURT THE JURY NEVER RECEIVED THIS EVIDENCE.

THE PETITIONER AVERTS FOR THIS PETITION ALL HIS CLAIMS 1-12 AS WRITTEN IN HIS MOTION FOR NEW TRIAL / MOTION TO CORRECT SENTENCE UNDER R.61.

THERE HAS AND IS A MIS-CARRIAGE OF JUSTICE, AS SUCH THE PETITIONER CLAIMS THAT THE COMMONWEALTHS RULINGS AND/OR IGNORANCE OF THOSE CLAIMS VIOLATE THE CONSTITUTION AS WELL AS CLEARLY EST. FEDERAL LAW.

THE PETITIONER AS A MATTER OF LAW AND HIS  
PROTECTIONS UNDER THE U.S. CONSTITUTION'S SIXTH AND  
14TH AMENDMENTS MUST BE GIVEN RELIEF.

Respectfully Submitted  
John Dutcher  
JOHN DUTCHER

ARGUMENTS FOR PETITION 1-12 pgs 7-57 follow